

**HUTCHISON & STEFFEN**

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9 Attorneys for Plaintiff  
 1<sup>st</sup> TECHNOLOGY LLC

10  
 11 UNITED STATES DISTRICT COURT  
 12 DISTRICT OF NEVADA

13 1ST TECHNOLOGY LLC,

14 Plaintiff,

15 v.

16 RATIONAL ENTERPRISES LTD.,  
 17 RATIONAL POKER SCHOOL LIMITED,  
 BODOG ENTERTAINMENT GROUP  
 S.A., BODOG.NET, BODOG.COM, and  
 FUTUREBET SYSTEMS LTD.,

18 Defendants.

19 2:06-cv-01110-RLH-GWF

20 **PLAINTIFF 1<sup>ST</sup> TECHNOLOGY**  
**LLC'S OPPOSITION TO**  
**DEFENDANTS BODOG**  
**ENTERTAINMENT GROUP, S.A.,**  
**BODOG.NET, AND BODOG.COM'S**  
**MOTION TO QUASH SUBPOENA**

21 Plaintiff 1<sup>ST</sup> TECHNOLOGY LLC (hereinafter "1<sup>st</sup> Technology") by and through its counsel  
 22 of record, HUTCHISON & STEFFEN, LLC, hereby files its Opposition to Defendant BODOG  
 23 ENTERTAINMENT GROUP S.A.'s ("Bodog") Motion to Quash Subpoena. 1<sup>st</sup> Technology  
 followed the instructions of the Clerk of the Court for the United States District Court for the  
 24 District of Southern Florida. Moreover, Bodog lacks standing to challenge the subpoena on ION  
 25 Media Network ("ION"). Finally, Bodog's attorneys improperly interfered with ION's response  
 26 to the subpoena and procured ION's non-compliance despite its willingness to produce the  
 27 requested documents. Ion was willing to comply with the subpoena until Bodog told it not to.  
 28

1        This Opposition is made and based on the papers and pleadings on file herein, the attached  
2 Memorandum of Points and Authorities and Exhibits, and any oral argument of counsel which the  
3 Court may choose to hear.

4 DATED this 8<sup>th</sup> day of October, 2007.

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ZKSR

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## 1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

### 2           **I. INTRODUCTION AND FACTUAL BACKGROUND**

3           This is a patent infringement matter in which 1<sup>st</sup> Technology filed suit against the defendants  
4 for infringement of 1<sup>st</sup> Technology's patent, Patent No. 5,564,001, entitled, "Method and System  
5 for Interactively Transmitting Multimedia Information Over a Network which Requires a Reduced  
6 Bandwidth". 1<sup>st</sup> Technology filed its Complaint against the Bodog Entities on September 7, 2006.  
7 The Complaint was properly served on the Bodog Entities through an officer of Bodog. Bodog  
8 ignored the Complaint and never entered an appearance, or advised through counsel or otherwise  
9 that Bodog had retained counsel in this matter. Accordingly, 1<sup>st</sup> Technology appropriately applied  
10 for a Default Judgment, which the Court granted.

11           Bodog finally responded to the lawsuit after 1<sup>st</sup> Technology began collections efforts, and  
12 – after giving Bodog notice – obtained writs of execution on domain names registered to Bodog  
13 through a United States registrar. Bodog's Motion to Set Aside Default is pending before the Court  
14 but the judgment is currently valid and enforceable.

15           On February 5, 2007, ION and Bodog entered a television "alliance." See news release, a  
16 true and correct copy of which is attached to this opposition as exhibit 1. As part of the contract,  
17 Ion agreed to televise "BodogTV" events, including mixed martial arts events, and to collaborate  
18 with Bodog on "on advertising sales as well as marketing and promotion for the programming."

19 Id.

20           In early September, 2007, 1<sup>st</sup> Technology propounded a subpoena on ION pursuant to FRCP  
21 69 and its judgement against Bodog. 1<sup>st</sup> Technology sought information relating to contracts  
22 between Bodog and ION for purposes of collecting its default judgment.

23           ION is located in West Palm Beach, Florida. On September 5, 2007, prior to preparing the  
24 subpoena for ION, 1<sup>st</sup> Technology's attorneys' office contacted the Clerk of the Court for the United  
25 States District Court, District of Southern Florida to determine that jurisdiction's procedure for  
26 serving subpoenas on entities located there. See affidavit of Danette Young, a true and correct copy  
27 of which is attached hereto as exhibit 2. 1<sup>st</sup> Technology explained that ION was not a party to the  
28 Nevada action. Id. In response, the Clerk of the District Court for the Southern District of Florida

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1 told 1<sup>st</sup> Technology that the subpoena must issue in the jurisdiction where the litigation was  
2 pending. Id. The Clerk said that if the entity did not comply with the subpoena 1<sup>st</sup> Technology  
3 should seek leave from that court by filing a motion to compel, a civil cover sheet, and a filing fee.  
4 Id.

5 On September 5, 2007, 1<sup>st</sup> Technology retained a process server to serve the subpoena on  
6 ION in West Palm Beach. Id. On September 7, 2007, the process server served the subpoena on  
7 ION's Senior Vice President Adam Weinstein. Id; see also certificate of service, a true and correct  
8 copy of which is attached to exhibit 2 at exhibit B.

9 On October 2, 2007, Uleses Henderson, Jr., an attorney for Bodog, called counsel for 1<sup>st</sup>  
10 Technology. See affidavit of L. Kristopher Rath, a true and correct copy of which is attached hereto  
11 as exhibit 3. Mr. Henderson asserted that the subpoena on ION should be stayed until after the  
12 Court hears Bodog's motion to set aside. Id. In response, 1<sup>st</sup> Technology attorney Kristopher Rath  
13 indicated that it had not heard from ION but would consider any objection or request ION made.  
14 Id.

15 On October 3, 2007, R.J. Murillo, Director of Business and Legal Affairs for ION, called  
16 Mr. Rath. Id. Mr. Murillo indicated that Bodog attorneys had contacted ION and that Bodog  
17 objected to the subpoena. Id. ION's sole concern was that the financial terms of the agreement  
18 with Bodog be kept confidential. Id. ION indicated that it had responsive documents and would  
19 provide them so long as the documents were kept confidential and that financial information be  
20 redacted or kept under seal if filed with the Court. Id. 1<sup>st</sup> Technology agreed to these terms. Id.

21 Later in the day on October 3, 2007, Mr. Murillo wrote an email to Mr. Rath indicating that  
22 ION was now unwilling to comply with the subpoena. Id; see also email, a true and correct copy  
23 of which is attached to exhibit 3 as exhibit A. In the email, Mr. Murillo indicated that "we have  
24 been informed that the above referenced subpoena is invalid and the defendants in this action plan  
25 to file a motion to quash the subpoena." See exhibit A to exhibit 3. The email also noted that  
26 ION's response to the subpoena would include a "Distribution and Marketing Agreement dated as  
27 of January 30, 2007." Id. Finally, the email asked that the terms and conditions be kept  
28 confidential. Id. As noted above, 1<sup>st</sup> Technology had already agreed to such confidentiality. See

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1 exhibit 3.

2 It appears that Bodog counsel “persuaded” ION not to comply with 1<sup>st</sup> Technology’s  
3 subpoena after the conference call between 1<sup>st</sup> Technology’ counsel and ION on October 3<sup>rd</sup>. Id.  
4 Accordingly, only Bodog’s counsel’s influence is preventing ION’s compliance with the legal  
5 subpoena. Id.

## 6 **2. ANALYSIS**

### 7 **A. 1<sup>st</sup> Technology’s Subpoena is Valid and Proper**

8 Judgment creditors are permitted wide discovery rights. Pursuant to FRCP 69  
9 (“Execution”):

10 [T]he procedure on execution, in proceedings supplementary to and in aid  
11 of a judgment, and in proceedings on and in aid of execution shall be in  
12 accordance with the practice and procedure of the state in which the district  
13 court is held, existing at the time the remedy is sought, except that any  
14 statute of the United States governs to the extent that it is applicable. **In aid  
of the judgment or execution, the judgment creditor or a successor in  
interest when that interest appears of record, may obtain discovery  
from any person, including the judgment debtor, in the manner  
provided in these rules or in the manner provided by the practice of the  
state in which the district court is held.**

15 FRCP 69 (emphasis added). 1<sup>st</sup> Technology therefore may engage in discovery as provided by the  
16 Federal Rules of Civil Procedure, including the issuance of subpoenas on non-parties pursuant to  
17 FRCP 45.<sup>1</sup>

18 The Clerk of the Court for the Southern District of Florida instructed 1<sup>st</sup> Technology that its  
19 rules of practice required 1<sup>st</sup> Technology to first serve the Nevada subpoena on ION. See exhibit  
20 2. Accordingly, 1<sup>st</sup> Technology adhered to the Clerk’s directive and served the subpoena directly  
21 on ION. Id. Accordingly, Bodog’s arguments concerning the validity of the subpoena are  
22 unconvincing.

23 The subpoena is neither vague nor irrelevant. The subpoena requested documents relating  
24 to the defendants/judgment debtors in this action, Bodog Entertainment Group, S.A., Bodog.com,  
25 and Bodog.net. However, Bodog is believed to operate a legion of different businesses under the

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27 <sup>1</sup> NRCP 69 similarly states that “In aid of the judgment or execution, the judgment creditor  
28 or a successor in interest when that interest appears of record, may obtain discovery from any  
person, including the judgment debtor, in the manner provided in these rules.” NRCP 69.

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1 “Bodog Entertainment Group, S.A.” umbrella. While Bodog failed to answer 1<sup>st</sup> Technology’s  
2 complaint and accordingly no discovery was performed on this issue, 1<sup>st</sup> Technology believes that  
3 Bodog has many subsidiaries, some of which may engage in contracts with third parties. Therefore,  
4 the subpoena requested contracts relating to the judgment debtors and other entities in the Bodog  
5 family. The request is neither vague nor difficult to comprehend. As discussed below, ION  
6 apparently understood the subpoena well enough to respond to it until Bodog’s counsel muscled  
7 it into not complying. See exhibit 3.

8 Bodog’s relevance arguments are flat wrong. As discussed above, FRCP 69 permits  
9 judgment creditors to “obtain discovery from **any person**, including the judgment debtor, in the  
10 manner provided in these rules or in the manner provided by the practice of the state in which the  
11 district court is held.” FRCP 69 (emphasis added). 1<sup>st</sup> Technology’s subpoena is issued pursuant  
12 to this rule and its judgment against Bodog. The information is sought solely to discover what  
13 assets Bodog maintains that 1<sup>st</sup> Technology may collect. It has nothing to do with harassing a third-  
14 party. Again, ION did not claim it was under any harassment and was willing to produce the  
15 subpoenaed documents until Bodog’s counsel prevented the production. See exhibit 3.

16 Likewise, the discovery sought is neither overbroad nor seeks proprietary or confidential  
17 information. Neither Bodog nor ION have demonstrated why the subpoena is overbroad or unduly  
18 burdensome. In fact, exhibit E to Bodog’s opposition (exhibit A to exhibit 3 to his opposition)  
19 indicates that the responsive document is a single January 30, 2007 contract. Until ION indicates  
20 what is proprietary or confidential about the responsive document, 1<sup>st</sup> Technology cannot adequately  
21 respond to the argument. For purposes of this opposition, 1<sup>st</sup> Technology is willing to stipulate to  
22 a protective order if the responsive documents actually contain proprietary or confidential  
23 information.

24 **B. Bodog Lacks Standing to Contest This Subpoena**

25 Bodog’s arguments concerning the alleged burden on ION was misplaced because Bodog  
26 has no standing to raise that issue. Bodog only has standing to raise one objection on a subpoena  
27 to a non-party like ION: a privilege. Bodog’s motion does not mention any privilege as a basis for  
28

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1 its desired relief.<sup>2</sup> Accordingly, it lacks standing and its motion should be denied.

2 “As a general matter, a party has no standing to seek to quash a subpoena directed to one  
3 who is not a party. However, a party may raise objections in situations where the party claims some  
4 personal right or privilege relating to the documents sought.” Oliver B. Cannon and Son, Inc. v.  
5 Fidelity and Cas. Co. of New York, 519 F.Supp. 668, 680 (D.C.Del. 1981); see also Green v.  
6 Sauder Mouldings, Inc., 223 F.R.D. 304, 306 (E.D. Va. 2004) (“A motion to quash should be made  
7 by the person or entity from whom or from which the documents or things are requested. Generally,  
8 a party to litigation has no standing to move to quash a third-party subpoena duces tecum unless the  
9 movant claims some personal right or privilege to the documents sought.”); see also Smith v.  
10 Midland Brake, Inc., 162 F.R.D. 683, 685 (D. Kan. 1995) (“A motion to quash or modify a  
11 subpoena duces tecum may only be made by the party to whom the subpoena is directed except  
12 where the party seeking to challenge the subpoena has a personal right or privilege with respect to  
13 the subject matter requested in the subpoena.”).

14 Bodog does not assert a personal right or privilege in its motion. It merely asserts defenses  
15 applicable to ION. Accordingly, it lacks standing to bring this motion.

16 **C. The Subpoena Is Not Untimely**

17 Bodog’s argument concerning untimeliness is incorrect because 1<sup>st</sup> Technology’s subpoena  
18 is made pursuant to FRCP 69, not FRCP 26. FRCP 69 does not require a conference pursuant to  
19 FRCP 26. Moreover, Bodog purposely ignored 1<sup>st</sup> Technology’s complaint and accordingly Rule  
20 26’s discovery planning mechanism was not enacted. Had Bodog chosen to answer the underlying  
21 complaint, the parties would have proceeded to a FRCP 26 conference. It failed to do so. The  
22 subpoena is valid pursuant to FRCP 69.

23 **D. Bodog Improperly Interfered With The Subpoena**

24 As explained above, ION intended to comply with 1<sup>st</sup> Technology’s subpoena. See exhibit  
25 3. As also explained above, Bodog has no standing to raise objections on ION’s behalf because it  
26 does not assert personal rights or a privilege. However, Bodog intentionally interfered with ION’s

28 \_\_\_\_\_  
29 <sup>2</sup> 1<sup>st</sup> Technology agreed to ION’s proposed protective order and confidentiality stipulations.  
See exhibit 3.

1 voluntary compliance with the subpoena. Id. Its interference was improper and is another ground  
2 to deny its motion.

3 **3. CONCLUSION**

4 For the foregoing reasons, 1<sup>st</sup> Technology respectfully requests the Court deny Bodog's  
5 improper motion to quash.

6 DATED this 8<sup>th</sup> day of October, 2007.

7 HUTCHISON & STEFFEN, LLC

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## **CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 8<sup>th</sup> day of October, 2007, I caused the above and foregoing document entitled: **PLAINTIFF 1<sup>ST</sup> TECHNOLOGY LLC'S OPPOSITION TO DEFENDANTS BODOG ENTERTAINMENT GROUP, S.A., BODOG.NET, AND BODOG.COM'S MOTION TO QUASH SUBPOENA** to be served via electronically through ECF/PACER to the attorneys listed below:

**Charles McCrea, Esq.**

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~~An employee of Hutchison & Steffen, LLC~~